NO. 82-1614

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BLAZER CORPORATION,

Petitioner,

v.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY, DAVID A. WERBLIN, CHARLES SERRAINO, ADRIAN M. FOLEY, JR., GEORGE F. KUGLER, JR., AUBREY C. LEWIS, JOSEPH M. McCRANE and "JOHN DOES," said names being fictitious,

Respondents.

BRIEF OF RESPONDENT NEW JERSEY SPORTS AND EXPOSITION AUTHORITY IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Dated: May 12, 1983

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Statement of Questions Presented for Review

Respondent New Jersey Sports and Exposition Authority ("Respondent Authority") notes that of the four issues set forth by Petitioner Blazer Corporation ("Petitioner") in its Statement of Questions Presented for Review, only one (the third) was reached and decided below by the Court of Appeals for the Third Circuit. It was not necessary for such Court to resolve the other three issues now presented by Petitioner because of that Court's determination, upon a review of the factual record in this case and upon the application of well-established precedent in this Court and in the Third Circuit and other Circuits, that Petitioner had simply failed to state a cause of action under 28 U.S.C. §1983.

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Respondent New Jersey Sports and Exposition Authority respectfully prays that the Petition of Blazer Corporation for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit be denied.

Constitutional Provisions, Statutes and Regulations Which the Case Invokes

The following relevant statutes, in addition to those included in the appendix to the Petition, are set forth verbatim in the appendix hereto: N.J. Stat. Ann. §2A:14-1 (West 1982); N.J. Stat. Ann. §20:4-4 (West 1982); N.J. Stat. Ann. §20:4-7 (West 1982); N.J. Stat. Ann. §20:4-10 (West 1982); N.J. Stat. Ann. §20:4-11 (West 1982); N.J. Stat. Ann. §20:4-18 (West 1982); N.J. Stat. Ann. §20:4-19 (West 1982); N.J. Stat. Ann. §52:31B-8 (West 1982); N.J. Stat. Ann. §59:2-2 (West 1982); N.J. Stat. Ann. §59:3-1 (West 1982).

Statement of the Case

The case which Petitioner seeks to have this Court review is one peculiar in its facts. Contrary to the requirements of Sup. Ct. R. 21.1(g), Petitioner, in its Statement of the Case, does not set forth "facts material to the consideration of the questions presented." Rather, Petitioner's Statement of the Case contains little more than a series of legal conclusions and legal arguments unsupported by the factual record in this case, a factual record which caused the Court of Appeals for the Third Circuit to dismiss Petitioner's Complaint for failure to state a cause of action.

Petitioner alleges that it was denied relocation benefits when property which it occupied as a tenant was condemned for the Meadowlands Complex. In fact, Petitioner was repeatedly offered relocation assistance pursuant to the New Jersey Statutes, which Petitioner acknowledges thoroughly protect the rights of relocatees (Petition, at 3), but repeatedly refused such assistance. If Petitioner failed to receive assistance, it was, as the record clearly demonstrates, because of Petitioner's *own* efforts to frustrate the condemnation and relocation, by

studied avoidance and refusal to cooperate. Moreover, the statutory violation of which Petitioner complains clearly does not confer substantive rights of constitutional dimension. There is no federal question or denial of constitutional rights presented by the facts of this case, much less any question of special importance or of discord among the federal courts of appeal.

The Parties

Petitioner is a corporation of the State of New Jersey currently having its principal office at 700 21st Avenue, Paterson, New Jersey (R. 9a).* Prior to August 15, 1974, Petitioner was a tenant leasing approximately 10.35 acres of land (RA. 6a) and buildings at 400 Paterson Plank Road, East Rutherford, New Jersey, where Petitioner was engaged in the manufacture of air conditioning systems (the "Premises") (R. 10a). The owner of the land and buildings which Blazer leased—Blazer Realty Corporation ("Blazer Realty"), a corporation wholly owned and controlled by Benjamin Blazer, the principal of Petitioner—is not a party to this action (R. 303a).

Respondent Authority is a body politic and corporate of the State of New Jersey established in the Department of Community Affairs and having its principal office at the "Meadowlands Sports Complex" in East Rutherford, New Jersey (R. 73a). Created by State legislation enacted in May of 1971, N.J. Stat. Ann. §5:10-1 *et seq.* (West 1982) (P.L. 1971, c.137), Respondent Authority is authorized by N.J. Stat. Ann. §5:10-5(m) (West 1982) to acquire land and other property by the power of eminent domain for the purposes of constructing in and about East

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* References in this Brief to materials contained in the two volume appendix below entitled "Appendix on behalf of Plaintiff-Appellant," shall be designated by the abbreviation "R." and the number of the page therein to which reference is made. References to materials contained in the appendix below entitled "Appendix on behalf of Defendant-Respondent, New Jersey Sports and Exposition Authority" shall be designated by the abbreviation "RA." and the number of the page therein to which reference is made.

Rutherford, New Jersey a complex for the presentation of sporting and similar events.

The individual Respondents were officials of Respondent Authority at the time of the action of which Petitioner complained (R. 70a).

The Condemnation Proceedings

In 1971 and 1972, pursuant to the directive contained in N.J. Stat. Ann. §5:10-6 (West 1982), Respondent Authority commenced the planning for the construction of the Meadowlands Complex, including the determination of how much and which property would have to be acquired. Respondent Authority concluded that the property Petitioner occupied as tenant was necessary to construct the Meadowlands Complex (RA. 5a).

By letter dated June 12, 1972, Respondent Authority first informed Petitioner that, pursuant to statute, its appraisers would be making an inspection of the Premises in connection with the acquisition of such property by condemnation for the proposed Meadowlands Complex (RA. 6a). Although Petitioner initially refused to allow the appraisal to be conducted (RA. 4a), the property was eventually appraised in the amount of $1,115,000.00 and on February 28, 1973, Respondent Authority sent to Petitioner a written offer to acquire the Premises (RA. 5a).

On March 20, 1973, in accordance with N.J. Stat. Ann. §20:3-1 *et seq.* (West 1982), Respondent Authority filed against Petitioner a Complaint in Condemnation and a Declaration of Taking as to the Premises and deposited with the Clerk of the Superior Court of the State of New Jersey, pursuant to N.J. Stat. Ann. §20:3-18 (West 1982), the amount, revised per a reconsideration of the acreage, of $1,330,395.00 (R. 29a to 30a).

In June 1973, Respondent Authority filed a Notice of Motion in Superior Court of New Jersey seeking an order requiring Petitioner and Blazer Realty to vacate the Premises by November 1, 1973; counsel for both Petitioner and Blazer Realty filed a cross-motion seeking to

withdraw the monies deposited with the Superior Court (R. 569a).

On November 12, 1973, following numerous conferences between counsel and the court, the Honorable Theodore W. Trautwein, J.S.C. entered a Consent Order allowing for withdrawal by and payment to Petitioner of all monies deposited, transferring ownership of the Premises to Respondent Authority, and requiring the payment by Petitioner to Respondent Authority of monthly rental until Petitioner vacated the Premises (the "Consent Order") (R. 569a to 574a). Along with all other parties, Petitioner consented to this Order in writing (R. 574a). Paragraph 12 of the Consent Order states:

> The defendant Blazer Corporation (tenant in possession) having specifically agreed to vacate all lands and premises which they presently occupy and which are the subject of these proceedings no later than February 1, 1974, said date shall not be extended without consent of the [Respondent Authority], and said [Petitioner] shall vacate said lands and premises on or before said date in the absence of such consent.

(R. 573a).

By letter dated December 12, 1973, Respondent Authority consented to Petitioner's remaining in possession of the Premises until May 1, 1974 in accordance with the terms provided for in the Consent Order (R. 575a). By letter dated April 23, 1974, Respondent Authority granted an additional extension until June 1, 1974 (R. 576a). In spite of the fact that Respondent Authority had consented to Petitioner's requests for extensions aggregating four months beyond the terms of the Consent Order, Petitioner did not vacate and Respondent Authority again moved before the Superior Court of New Jersey for an Order declaring Petitioner to be in violation of the Consent Order as modified, which Order was entered on June 20, 1974 (the "June 20th Order") (R. 577a to 579a). The June 20th Order required Petitioner to vacate its rear building by June 24, 1974 and its front office building by July 1, 1974,

and, in the event of non-compliance, authorized the Sheriff of Bergen County to take the necessary steps to guarantee possession of the Premises to Respondent Authority (R. 578a). The June 20th Order also established per diem fines if it were not followed (R. 579a). The dates established in the June 20th Order were further extended, by Order of the Court dated July 16, 1974 (R. 608a), to August 15, 1974 with the proviso that, if Petitioner had not vacated by August 15, 1974, Respondent Authority could enter the Premises and commence demolition "without further Order of this Court" (R. 610a).

The Relocation Proceedings

In April of 1973, and pursuant to N.J. Stat. Ann. §20:4-11 (West 1982), Respondent Authority entered into an agreement with the New Jersey State Department of Transportation ("DOT") whereunder the DOT agreed to formulate, process for approval with the New Jersey Department of Community Affairs ("DCA") and implement a Workable Relocation Assistance Plan ("WRAP") on behalf of Respondent Authority (R. 447a to 452a). In accordance with the DOT/Authority Agreement, the DOT did formulate and implement the WRAP (R. 480a to 568a), which WRAP was substantively approved by the DCA (R. 455a). Also, in accordance with the DOT/Authority Agreement, and in order to implement the WRAP, the DOT assigned to an office established on the Meadowlands Complex site in East Rutherford an experienced office staff consisting of at least four full time relocation representatives and a secretary, with additional staff as needed (R. 582a).

On May 9, 1973, the DOT sent a letter to Blazer Realty notifying it of the existence of the relocation office (R. 459a). This letter was received by Petitioner on May 10, 1973 (RA. 11a). Enclosed with the letter was a copy of the information Booklet entitled "If I Must Move . . ." (R. 559a to 567a), which informed Petitioner that:

> When the State's Relocation Representative contacts you, he will explain the various benefits and serv-

> ices that are available to you and should you desire, he will assist you in developing a personalized relocation plan.

(R. 560a).

During May 1973, the relocation representatives assigned to implement the WRAP had commenced personal contact with each of the owners and tenants of property subject to the WRAP, including Petitioner (R. 32a). John Racanelli, the relocation representative assigned to Petitioner, made initial contact with Petitioner on May 17, 1973 (R. 33a, ¶4; R. 583a, ¶4, R. 612a). As the log sheet records required of and kept by Racanelli show, Racanelli met with Benjamin Blazer in May of 1973 for several hours and explained the relocation process (R. 33a, ¶4; R. 583a, ¶4; R. 612a). In June, Racanelli met with Petitioner's attorney and explained the relocation assistance procedures to him (R. 33a, ¶4; R. 583a, ¶4; R. 612a). In each of these meetings, Racanelli offered his assistance as a relocation representative to Petitioner and advised that he would need access to the Premises in order to assess the nature of the move and the requirements of Petitioner in relocating (R. 33a to 34a; R. 583a to 585a; R. 612a to 622a).

Racanelli's log sheets indicate that Racanelli initiated approximately thirty contacts, or efforts to contact, Benjamin Blazer and/or Petitioner's attorney, during the fifteen months from the May 9, 1973 letter to the date Petitioner's movers commenced the move (R. 612a to 626a). Racanelli's offers of assistance were refused by Petitioner, many phone calls were not returned (R. 616a), and he was not allowed access to the Premises so as to be able to assess Petitioner's physical needs for a new facility or to provide the requisite data to movers. Many other contacts were attempted or made with various managers or supervisors employed by Petitioner (R. 612a to 622a). Significantly, the only contacts initiated by Petitioner (involving the eleventh hour estimates of the movers) evoked Racanelli's immediate response, including his hand-delivery of the necessary documents to Trenton and back (R. 612a to 618; R. 620a).

Benjamin Blazer's reluctance to participate in the relocation process until the eleventh hour may be explained by the position he took in the proceedings before Judge Trautwein, wherein he indicated his belief that the Meadowlands Complex would not receive funding (R. 34a, ¶5; R. 584a, ¶5). Despite the November 12, 1973 Consent Order directing Petitioner to vacate the Premises by February 1, 1974, Benjamin Blazer, during February 1974, advised Racanelli that Petitioner was considering building a new facility elsewhere and since such building would take at least six months to construct, moving estimates were not yet necessary (R. 614a). And, while the November 12th Consent Order had been modified to allow Petitioner to remain in possession until only May 1, 1974, this notion was repeated to Racanelli by Benjamin Blazer on March 22, 1974, this despite Racanelli's and Benjamin Blazer's counsel having previously discussed the ramifications of the existing Consent Order, as modified, directing Petitioner to vacate the Premises by May 1, 1974 (R. 614a).

On May 22, 1974, more than a year after the initial contact and well after the original date to vacate set by Judge Trautwein, Racanelli was finally permitted by Petitioner to meet with Petitioner's representatives to discuss the machinery on the Premises (R. 616a). On June 14, 1974, Benjamin Blazer indicated to Racanelli that two relocation sites were under construction by Petitioner, but he refused to provide Racanelli with addresses (R. 618a). On June 19, 1974, Racanelli was informed that Petitioner had arranged to enter into a lease agreement for premises at 100 Orchard Street, Hackensack, New Jersey, several miles away, and Racanelli, along with personnel from Petitioner, went to the site (R. 618a). Such personnel advised Racanelli that the only matter not completed to effectuate the tenancy was that Benjamin Blazer had not yet signed the lease, which was "sitting on his desk" (R. 594a to 596a). Petitioner then advised Respondent Authority that Petitioner needed some additional time to effect an orderly move (R. 622a). The

Meadowlands Complex engineer, by letter dated June 21, 1974 (almost five months past the date upon which Petitioner had agreed to vacate) informed Respondent Authority that the Authority could accommodate Petitioner by allowing Petitioner to remain in possession until August 15, 1974, but that Petitioner's remaining on the site after that date would cause serious delays in the construction of the Meadowlands Complex, and would entail major construction expenses and lost revenues (R. 606a to 607a). On July 16, 1974, on motion of Respondent Authority, Judge Trautwein amended the June 20th Order and allowed Petitioner to remain until August 15, 1974, but also ordered that the Authority could enter onto the land and commence demolition without further order of the Court (R. 609a to 610a).

On July 16, 1974, two moving estimates were given by personnel of Petitioner to Racanelli, who immediately returned them as lacking necessary information (R. 594a). On July 26, 1974, Petitioner's representatives reported to Racanelli that the lease for 100 Orchard Street was still on Benjamin Blazer's desk awaiting his signature (R. 596a). On August 1, 1974, three moving estimates were picked up by Racanelli and were hand-delivered to Trenton for review (R. 596a).

On August 12, 1974, the bid of Main Trucking & Rigging was authorized for the move to Hackensack (R. 586a, ¶9) and the authorization letter to that effect was hand delivered by Racanelli to Petitioner, whereupon Racanelli was again informed that Benjamin Blazer had not yet signed the lease for the facility in Hackensack, as he was vacationing in Florida (R. 596a). Nonetheless, personnel of Petitioner arranged with Main Trucking for the move, to commence on August 14, 1974 (R. 598a). Racanelli met with representatives of Petitioner and Main Trucking on August 13, 1974 at the Premises to discuss the move (R. 598a). The loading of equipment and machinery onto trucks under the supervision of personnel of Petitioner began on August 14, 1974 (R. 598a). When the movers for Main Trucking and personnel of Petitioner arrived at the

Premises on August 15, 1974 to continue the move, they were confronted with locked gates and a sign declaring that Petitioner had filed for bankruptcy (R. 598a).

The Voluntary Bankruptcy

On August 16, 1974, Petitioner filed a Voluntary Petition for Reorganization under Chapter XI of the Bankruptcy Act and obtained an Order appointing a Receiver (R. 132a to 135a) and imposing restraints against Respondent Authority from "interfering with the orderly removal of the assets of the Debtor corporations to a new location . . . [and] from commencing demolition of all buildings and other improvements thereon" (R. 134a to 135a). Respondent Authority moved to dissolve the restraints, and the Premises were finally vacated on September 5, 1974 (RA. 9). Under the direction of Petitioner's Trustee in Bankruptcy, the machinery was moved to and stored in the warehouse of Main Trucking at an additional cost to Respondent Authority of $108,000.00 (RA. 10a).

At no time did the Bergen County Sheriff evict Petitioner from the Premises. Petitioner had itself submitted the moving bids, contracted with the approved mover, and commenced with the move prior to the filing of its Voluntary Petition under Chapter XI. In connection with the voluntary bankruptcy, the Trustee in Bankruptcy for Petitioner completed the move pursuant to a Consent Order. Petitioner is now operating in Paterson, New Jersey.

The Present Litigation

On August 12, 1980, Petitioner filed a Complaint in the United States District Court for the District of New Jersey under 28 U.S.C. §1331(a) and 42 U.S.C. §1983 (R. 9a to 21a), alleging that Respondents had violated certain New Jersey statutes giving rise to a cause of action under 42 U.S.C. §1983, this allegedly by (i) evicting Petitioner from the Premises at which Petitioner was a tenant "without making available to [Petitioner] all the expenses and payments to which it was entitled . . ." (R. 12a, ¶14); (ii) failing to inform Petitioner before its eviction that Peti-

tioner was "eligible for advance payments of relocation assistance allowances . . ." (R. 12a, ¶16); (iii) failing to "formulate or obtain the needed certification or certifications with regard to the Workable Relocation Assistance Program" (R. 14a, ¶20); (iv) failing, among other things, (a) to inform Petitioner of specific relocation benefits, (b) to inform Petitioner of current information as to comparable commercial properties, (c) to determine the extent of Petitioner's need for assistance, (d) to inform Petitioner about eviction policies, and (e) to offer prospective places for relocation (R. 14a, ¶22); (v) failing to give Petitioner 90-day written notice prior to dislocation (R. 15a, ¶24); (vi) failing to comply with eviction procedures (R. 15a, ¶27); (vii) failing to pay for losses of tangible personal property (R. 16a, ¶29); and (viii) failing to offer or pay for reasonable expenses in searching for a replacement business (R. 17a, ¶32). On October 23, 1980, Respondents filed an Answer generally denying the material allegations of the Complaint and setting forth specific affirmative defenses (R. 22a to 25a).

On September 17, 1981, Petitioner filed a motion for partial summary judgment against Respondents, seeking to establish their liability as a matter of law (R. 446a). On October 8, 1981, the individual Respondents filed a cross-motion for summary judgment under Fed.R.Civ.P. 56, asserting, *inter alia*, that Petitioner had failed to state a cause of action under 42 U.S.C. §1983 (R. 478a). On October 16, 1981, Respondent Authority also filed a cross-motion for summary judgment, asserting that Petitioner's claim against it was barred by the applicable statute of limitations (R. 755a). The motions were consolidated and heard by Judge Ackerman, J.D.C. on November 16, 1981 (R. 760a to 808a).

On December 7, 1981, Judge Ackerman issued an Order granting Respondent Authority's cross-motion for summary judgment on the basis that Petitioner's claim against Respondent Authority was barred by the applicable statute of limitations and allowing Petitioner to amend its

Complaint against the individual Respondents (R. 809a to 810a).

On January 6, 1982, Petitioner filed an Amended Complaint (R. 830a to 873a). On January 26, 1982, the individual Respondents again moved for summary judgment, contending, as to the Amended Complaint, that Petitioner had still failed to allege a cause of action under 42 U.S.C. §1983 as to the individual Respondents, and that, in any event, the individual Respondents were entitled to a qualified immunity (R. 896a). Petitioner filed a cross-motion for summary judgment (R. 898a). The motions were heard on March 1, 1982 (R. 903a to 955a), at which time Judge Ackerman rendered his decision from the bench denying Petitioner's cross-motion for summary judgment, and granting the individual Respondents' motion for summary judgment. Among other things, Judge Ackerman, having reviewed all of the allegations made by Petitioner in its Amended Complaint, found, (i) that, under Supreme Court and Third Circuit decisions, a person may be found liable under §1983 only for his "own conduct or participation in a pattern of violation by virtue of knowledge, acquiescence, support and encouragement" (R. 945a) and not under the doctrine of *respondeat superior* (R. 947a); (ii) that the notice of dispossession provided to Petitioner, particularly the orders in condemnation (R. 949a to 950a), was sufficient notice as a matter of law; (iii) that Respondent Authority had lawfully delegated to the DOT, under N.J. Stat. Ann. §20:4-11 (West 1982), the responsibility to formulate and implement a satisfactory relocation plan; and (iv) that Petitioner's claims reduce to the alleged failure on the part of Respondent Authority to file certification forms (DCA Forms 101 and 102) on behalf of Respondent Authority, which alleged failure would only be a violation of state law that would not rise to the level of constitutional error and therefore would not give rise to liability under 42 U.S.C. §1983. (Petition, 32a to 34a).

By Judgment dated December 2, 1982, the Court of Appeals for the Third Circuit affirmed the judgments

of the District Court, not on the non-substantive grounds upon which the District Court had dismissed Petitioner's claims against Respondent Authority and the individual Respondents,* but because Petitioner's complaint failed to state a cause of action under 42 U.S.C. §1983.**

The judgment of the Court of Appeals for the Third Circuit reads in its entirety as follows:

> Blazer Corporation appeals from a final order granting summary judgment against it on its Section 1983 complaint against the New Jersey Sports and Exposition Authority and certain of its officials. Since the complaint fails to state a cause of action for violation of that section, it is
>
> ORDERED, ADJUDGED and DECREED that the judgment be and is hereby affirmed.
>
> Costs are taxed in favor of appellees.

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* Contrary to Petitioner's misrepresentation of the record, "the Courts below" did not grant summary judgment dismissing all Respondents "on non-substantive grounds, including defenses of the statute of limitations (with respect to Respondent Authority only) and non-liability for the acts of subordinates under the doctrine of respondeat superior" (Petition, at 2 to 3). While these grounds may have formed the basis for the judgments of the District Court, they clearly did not form the basis for the judgment of the Court of Appeals for the Third Circuit.

** Contrary to Petitioner's further misrepresentation of the record, there is nothing "cryptic" about the judgment of the Court of Appeals for the Third Circuit (Petition, at 8). Not only is the language of the Court's decision clear (in dismissing Petitioner's complaint for failure to state a cause of action) but at oral argument on November 19, 1982, the panel members clearly indicated, on a number of occasions, as Petitioner's counsel well knows, that the statute of limitations issue, the *respondeat superior* issue, and the *Parratt* v. *Taylor* [451 U.S. 527 (1981)] issue did not have to be reached if the Court were to find, as it ultimately did, that Petitioner had failed to state a cause of action under 42 U.S.C. §1983. Indeed virtually the entire thrust of the panel's questioning of Petitioner's counsel was addressed to this latter issue.

Summary of Argument

Discretionary review, by writ of certiorari, of the decision of a federal court of appeals is appropriately limited, by Sup. Ct. R. 17, to situations where "special and important reasons" exist, as illustrated in the Rule. No such situation exists in the present case, a case which on its unique facts warrants the action of the Court of Appeals for the Third Circuit below in dismissing Petitioner's complaint for failure to state a cause of action under 42 U.S.C. §1983. Given the facts of this case, even when construed in favor of Petitioner, as did the Courts below, this Court should not exercise its discretion to consider legal issues which are not necessary to a disposition of this action and which do not have the far-reaching consequences which Petitioner suggests.

The decision of the Court below that Petitioner's complaint fails to state a cause of action under 42 U.S.C. §1983 involves essentially an application of the unique facts of this case to well-established law. The violation of state law alleged by Petitioner simply does not rise to constitutional dimension.

Further, the statute of limitations issue, extensively referred to by Petitioner, does not warrant discretionary review by this Court: (i) the issue is not necessary to the disposition of this matter, (ii) the issue therefore was not decided by the Court of Appeals below, (iii) consequently, there is no conflict between the Court of Appeals for the Third Circuit and other courts of appeal as to this issue, (iv) by the terms of the federal statute which prescribes applicable limitation laws in civil rights cases, conformity with state law rather than federal uniformity is the standard, and (v) the statute of limitations applied by the District Court in this matter (albeit mooted by the decision of the Court of Appeals for the Third Circuit) is not inconsistent with federal law and is insufficient, in any case, to warrant invocation of the Court's power of supervision.

ARGUMENT

I. This matter does not warrant invocation of this Court's discretionary jurisdiction to review causes by writ of certiorari, such review being appropriately limited to situations where "special and important reasons" exist.

Sup. Ct. R. 17 requires that discretionary review by this Court, by writ of certiorari, "will be granted only when there are special and important reasons therefore." No such special and important reasons, as illustrated in the Rule, are present in this case, which was properly decided by the Court of Appeals for the Third Circuit upon application of well-established law to unique facts. *See* discussion Point II, *infra*. The Court of Appeals for the Third Circuit did not render a decision in conflict with decisions of other federal courts of appeals, did not decide a federal question in a way in conflict with a state court of last resort, did not depart from the accepted and usual course of judicial proceedings such as to call for exercise of this Court's power of supervision, did not decide an important question of federal law which has not, but should be, settled by this Court, nor did it decide a federal question in a way in conflict with applicable decision of this Court. Rather, it routinely and summarily dismissed Petitioner's claims as insufficient under 42 U.S.C. §1983.

While for individual litigants the facts of their respective cases may have practical importance, this is not the type of "special and important" reason to which Rule 17 speaks. Even if, contrary to the record, there was room for dispute concerning the legal sufficiency of the facts of this case, certiorari would be inappropriate.

> This [certiorari] is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evalu-

> ation of testimony where on a conscientious consideration of the entire record a Court of Appeals under the new dispensation finds the Board's order unsubstantiated. In such situations we should "adhere to the usual rules of noninterference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations."

National Labor Relations Board v. *Pittsburgh Steamship Co.*, 340 U.S. 498 (1951).

Although Petitioner suggests that "a conflict among the Circuits exists with respect to the Tort Claims Act statute of limitations issue, which should be resolved by this Court" (Petition, at 11), the decision below of the Court of Appeals for the Third Circuit is not in conflict with the decision of any other federal court of appeals in this matter.* Contrary to the misleading implication in the Petition, the Third Circuit never decided the limitations issue, its resolution being unnecessary to that Court's disposition of this case on that Court's clearly stated ground that the Complaint "fail[ed] to state a cause of action for violation of [42 U.S.C. §1983]."

This Court should not exercise its discretionary jurisdiction to consider issues, the resolution of which is unnecessary to the disposition of a matter. Fundamental principles of judicial economy require that federal and constitutional issues, novel or otherwise, be decided only when they are determinative of the cause; where other grounds exist for disposition of a cause, the cause should be decided on such other grounds. This principle is particularly applicable to this Court's discretionary review of matters, by writ of certiorari, especially where the Court of Appeals, whose judgment Petitioner seeks to have reviewed, has, because of application of the same principle of judicial economy, not decided the federal or constitutional issue.

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* Moreover, the "conflict" to which Petitioner refers ignores the mandate of 42 U.S.C. §1988, which fosters diversity in its reference of the limitation period to state law. *See* discussion Point III, *infra*.

As this Court noted in *Sanks* v. *Georgia*, 401 U.S. 144, 151 (1971):

> [I]t has always been a matter of fundamental principle with this Court, a principle dictated by our very constitutional nature and constitutional obligations, that we exercise our powers of judicial review only as a matter of necessity.

See also United States v. *Petrillo*, 332 U.S. 1, 5 (1947):

> We have consistently refrained from passing on the constitutionality of a statute until a case involving it has reached a stage where the decision of a precise constitutional issue is a necessity.

Dismissal of Petitioner's complaint for failure to state a cause of action under 42 U.S.C. §1983 mooted the limitations issue before the Court of Appeals for the Third Circuit. Only if such dismissal were to warrant the grant of certiorari and only if such grant were to result in a reversal of such dismissal—neither result being justified by the record*—should the limitations issue be addressed, and then by the Court of Appeals for the Third Circuit in the first instance.

II. The dismissal of Petitioner's complaint for failure to state a cause of action under 42 U.S.C. §1983 was entirely appropriate under well-established precedent in this Court and in the courts of appeal and, in any case, does not present the "special and important reasons" required by Supreme Court Rule 17.

A. The uncontroverted facts do not support Petitioner's claim of a "systematic deprivation of New Jersey statutory relocation benefits." **

Petitioner was clearly afforded timely notice of available benefits. On May 9, 1973, more than fifteen (15) months in advance of Petitioner's actual dislocation and at least six (6) months prior to the first condemnation hearing, Petitioner was provided with the information booklet entitled

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* *See* discussion Point II, *infra*.

** (Petition, at 2).

"If I Must Move . . ." (R. 559a to 567a). Under the heading "What Notices Will I Get?", the information booklet informs recipients that notices will include formal public notices, personal contacts from relocation representatives as well as the booklet itself (R. 560a). Petitioner admits having received the information booklet "in May or June 1973" (R. 312a). In addition to enclosing the information booklet, the letter, dated May 9, 1973, also explained the location and office hours of the relocation office and described that relocation assistance services would be made available to Petitioner as it "may desire" (R. 459a).

In addition to having received the May 9th letter and having met with Racanelli in May 1973 (R. 612a), Petitioner participated in the condemnation proceedings in which Petitioner not only responded by pleadings to the Declaration of Taking, which in itself could not be more clearly notice of Respondent Authority's intent to relocate Petitioner, but also received notice to vacate the Premises by the November 12, 1972 Consent Order, set forth *supra*, by which Petitioner agreed to vacate as of February 1, 1973. Clearly, Petitioner was afforded more than "reasonably adequate notice," and the District Court below so held (R. 950a).

Petitioner further suggests that the WRAP approved and implemented on behalf of Respondent Authority was not "consistent with statutory mandates" (Petition, at 2).* It is clear, however, that the WRAP had been substantively approved by the Commissioner of DCA, as being in compliance with the requirements of the Relocation Assistance Law of 1971 (R. 455a)** and was implemented as ap-

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* As discussed *supra*, Petitioner does not question the validity and constitutionality of the statutory scheme (Petition, at 3).

** In his July 20, 1973 letter, the Commissioner stated:

> I have reviewed the Workable Relocation Assistance Program you have submitted and find the manner in which you propose to relocate persons displaced and the resources available for their relocation comply with the requirements of the *Relocation Assistance Law of 1971* and the *Regulations* promulgated thereunder (R. 455a).

proved. As the New Jersey Statute in question, N.J. Stat. Ann. §20:4-7 (West 1982), requires, the WRAP included "such measures, facilities or services" as may be necessary or appropriate to determine the needs of displaced businesses, to assist in relocating and to supply information concerning assistance. There is no question but that the WRAP formulated for the Meadowlands Complex was such a relocation assistance advisory program and was designed to facilitate the dissemination of information concerning relocation policies, benefits and procedures.

As the record, especially Racanelli's log sheets, demonstrate, relocation assistance was offered to Petitioner. That Petitioner chose to disregard the offers of assistance and chose not to take advantage of them is not Respondent Authority's failure. Petitioner's attempt to argue a violation of 42 U.S.C. §1983 out of its *own* failure is specious and clearly warrants the action of the Court of Appeals for the Third Circuit in dismissing Petitioner's complaint for failure to state a cause of action under 42 U.S.C. §1983.*

Analogously, the Federal District Court in *Boston* v. *United States,* 424 F.Supp. 259 (E.D. Mo. 1976), construing the federal relocation laws in a situation where

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* Each of the items in Petitioner's catalogue of assistance benefits allegedly not made available to Petitioner, were in fact provided to Petitioner through the relocation assistance representative or would have been made available to Petitioner had Petitioner cooperated with the relocation representative. Moreover, Petitioner was represented by counsel from the earliest meetings in 1974 throughout the relocation process, and all of the statutes and the regulations were matters of public record. Contrary to Petitioner's argument, Respondent Authority did not have the burden at the condemnation proceeding, or otherwise, to affirmatively establish statutory compliance. *Landon* v. *Plasencia,* —— U.S. ——, 103 S.Ct. 321, 74 L.Ed. 2d 21 (1982), offered by Petitioner as authority for such a duty on the part of Respondent Authority, is wholly inapplicable. *Plasencia* addresses the due process rights of resident aliens and neither the facts nor the law involved therein has any relevance to the matter sub judice.

the plaintiff had not availed itself of relocation assistance benefits, held that relocatees cannot claim failure on the part of the agency to provide advisory services where services were made available which the relocatee chose not to pursue. The Court stated:

> Plaintiffs [displacees] were provided with the necessary information with which to claim these rights but, apparently, chose not to contact the State Inter-Agency Council for Outdoor Recreation for advisory services. This Court will not require defendants to seek out persons who may be entitled to benefits under the law and provide those benefits to such persons. It is the Court's opinion that defendants satisfied the statute's requirements by providing the necessary information and allowing plaintiffs to decide whether to avail themselves of their statutory benefits. There is no evidence herein that plaintiffs were denied advisory services. To the contrary, the evidence indicates that plaintiffs were advised that such services were available but instead chose not to seek such services. Under these circumstances, plaintiffs are not entitled to injunctive relief.

Id. at 267.

Petitioner has also asserted a right as a matter of law to advance payment of relocation assistance.* The statute, however, provides that a person must make application for such advance payments, which would be available in any event only in hardship cases. N.J. Stat. Ann. §20:4-10(a)(2) (West 1982). No such application was made by Petitioner.**

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* It should be noted also that there is no constitutional right to relocation assistance. *United States* v. *Westinghouse Elec. & Mfg. Co.*, 339 U.S. 261 (1950).

** Petitioner's equal protcetion argument also fails because, *inter alia*, it is premised upon a denial of statutory rights and benefits to Petitioner and to a class of which Petitioner is a member, when, in fact, no rights or benefits were denied to Petitioner or to such class.

B. Assuming *arguendo* that DCA Forms 101 and 102 were not certified and filed, such would constitute, at best, a *de minimis* failure to follow an administrative procedure prescribed by state law and would not confer substantive rights of constitutional dimension.

42 U.S.C. §1983, enacted as part of the Civil Rights Act of 1871, provides as follows:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any Citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity or other proper proceeding for redress.

A cause of action under 42 U.S.C. §1983 requires two primary allegations: (1) that plaintiff has been deprived of a federal right, and (2) that the one who has so deprived plaintiff acted under color of state law. *Gomez* v. *Toledo,* 446 U.S. 635 (1980). While Respondent Authority does not dispute that it acted under color of state law, Petitioner's allegations that he was deprived of federal rights reduce, as Judge Ackerman found upon analysis of the record, to the single claim of the failure of Respondent Authority to file the required DCA Forms 101 and 102. All other claims advanced by Petitioner as alleged violations of New Jersey Relocation and Eminent Domain Statutes were found to be without merit. The only alleged deficiency in the WRAP, the failure to certify, clearly does not rise to constitutional dimension, as Judge Ackerman found, and as the Court of Appeals for the Third Circuit found.

It is well-settled in this Court that not all violations of state law rise to the level of constitutional error. *Bishop* v. *Wood,* 426 U.S. 341, 349 n.13 (1976); *Paul* v. *Davis,* 424 U.S. 693 (1976); *Elkins* v. *United States,* 364 U.S. 206, 223-224 (1960); *Screws* v. *United States,* 325 U.S. 91 (1945). In *Paul* v. *Davis,* this Court, in noting that Congress' power to make criminal the conduct of

state officials under the aegis of the Fourteenth Amendment was not unlimited and that 42 U.S.C. §1983 was not applicable to mere violations of state law, rejected the view that the Fourteenth Amendment's due process clause should extend a right to be free of injury wherever the state may be characterized as the tortfeasor:

> We have noted the "constitutional shoals" that confront any attempt to derive from congressional civil rights statutes a body of general federal tort law. *Griffin* v. *Breckenridge*, 403 U.S. 88, 101-102, 29 L.Ed. 2d 338, 91 S.Ct. 1790 (1971); *a fortiori* the procedural guarantees of the Due Process Clause cannot be the source for such law.

Id. at 701.

Similarly, various courts of appeal have held that not all state law violations have constitutional significance. *See,* for example, *United States* v. *Jiles,* 658 F.2d 194 (3rd Cir. 1981); *United States* v. *Scolnick,* 392 F.2d 320, 323 (3rd Cir. 1968), *cert. denied sub nom. Brooks* v. *United States,* 392 U.S. 931 (1968). As stated by the Court in *Jiles*:

> In determining whether the violation of a particular state law deprived a defendant of his due process rights under the fifth amendment, we must ascertain whether the state law directly conferred a substantive right on the defendant or merely created an *adminstrative plan to help the state regulate it officers' conduct. Slotnick* v. *Staviskey,* 560 F.2d 31, 34 (1st Cir. 1977), *cert. denied,* 434 U.S. 1077, 98 S.Ct. 1286, 55 L.Ed. 2d 783 (1978) ("The simple fact that state law prescribes certain proceedures does not mean that the procedures thereby require (sic) a federal constitutional dimension"). *See also Screws* [v. *United States*], 325 U.S. at 108, 65 S. Ct. at 1038; *States* v. *Jiles,* 658 F.2d 194, 200; *Street* v. *Surdyka,* 492 F.2d 368, (4th Cir. 1974). (Emphasis added).

United States v. *Jiles,* 658 F.2d 194, 200.

Thus, contrary to Petitioner's argument, the breadth of authority in this area demonstrates that *Jiles* is consistent with well-established precedent and should not be limited to

its facts. *See also King* v. *Hilton,* 525 F.Supp. 1192 (D.N.J. 1981):

> While *Jiles* involved the failure by state officials to follow state procedures in the context of a criminal proceeding, and thereby implicates the somewhat specialized jurisprudence of the exclusionary rule, the principles on which the *Jiles* decision rests are equally applicable to civil actions brought pursuant to 42 U.S.C. §1983.

Id. at 1198.

While Petitioner may have had the right to have a WRAP formulated and implemented, this was, in fact, done. Petitioner's rights do not extend to an interest in the execution of every administrative detail, especially one such as this which has no substantive significance under the circumstances of this case. It is clear that the representations* to which the Chief Executive Officer would have certified had the DCA Forms been filed were in fact carried out: the WRAP substantively met the approval of the Commissioner of Community Affairs and the WRAP was fully implemented. The irregularity of which Petitioner complained caused no damage to Petitioner. Petitioner's argument would, in effect, expand the jurisdiction of §1983 actions to every alleged technical violation of state law.

III. The additional legal issues set forth by Petitioner, not addressed by the Court below, do not present special and important reasons for review.

Petitioner also urges this Court to grant certiorari to consider the scope of *Parratt* v. *Taylor,* 451 U.S. 527 (1981) and the applicablity of appropriate limitations laws in civil rights cases. Since neither of these issues was necessary to the decision of the Court of Appeals for the Third Circuit in dismissing Petitioner's complaint and since neither

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* The Certifications DCA 101 and 102 basically affirm that the Relocation Plan submitted conforms with the statute and that the Authority will perform the Plan.

was therefore decided by such Court, this is not the appropriate case in which this Court should address these issues. Disposition of these issues, as the following discussion demonstrates, merely provides additional bases for the result reached below, further militating against the grant of certiorari.

A. Petitioner misperceives the prerequisites to a claim under 42 U.S.C. §1983 for violation of the due process clause.

In *Parratt* v. *Taylor*, 451 U.S. 527 (1981), this Court addressed the requirements for alleging a §1983 cause of action based purely on the due process clause of the Fourteenth Amendment. In *Parratt*, a prison inmate filed a claim under 42 U.S.C. §1983 against prison offcials alleging violation of his rights guaranteed by the Fourteenth Amendment as the result of the deprivation of his property without due process of law. Hobby materials which the prison inmate had ordered from outside the prison were delivered to and received by the prison, but were not delivered to the inmate and could not be located. The Court stated:

> Unquestionably, respondent's claim satisfies three prerequisites of a valid due process claim: the petitioner acted under color of state law; the hobby kit falls within the definition of property; and the alleged loss, even though negligently caused, amounted to deprivation. Standing alone, however, these three elements do not establish a violation of the Fourteenth Amendement. Nothing in the Amendment protects against all deprivations of life, liberty, or property by the State. The Fourteenth Amendment protects only against deprivations "without due process of law." Baker v. McCollan, 443 U.S., at 145, 61 L.Ed. 2d 433, 99 S.Ct. 2689. Our inquiry therefore must focus on whether the respondent has suffered a deprivation of property without due process of law.

Id. at 536-537.

In *Parratt*, the Supreme Court held that the prison inmate therein had not alleged a violation of the Due Pro-

cess Clause of the Fourteenth Amendment since, *inter alia,* the State of Nebraska had provided a remedy to persons who believe they have suffered a tortious loss at the hands of the state which the inmate had chosen not to pursue.

> [T]he existence of an adequate remedy to redress property damages inflicted by state officers avoids the conclusion that there has been any constitutional deprivation of property without due process of law within the meaning of the Fourteenth Amendment.

Id. at 542. Were the cause not first dismissed upon the threshold issues discussed in Point II, *supra, Parratt* would be dispositive of this case, where remedies clearly existed for Petitioner's benefit which Petitioner elected not to use.

In *Paterson Redevelopment Agency* v. *Schulman,* 396 A. 2d 573 (1979), the New Jersey Supreme Court held that both N.J. Stat. Ann. §20:4-10(a) (3) (West 1982) and N.J. Stat. Ann. §20:4-19 (West 1982)* provided administrative remedies with regard to the amount of relocation payments or eligibility for payments under the Relocation Assistance Act. Additionally, as the Court noted, after a final decision by an administrative agency, the aggrieved displacee can appeal, as of right, to the state Appellate Division. *Id.* at 386. In language presaging *Parratt,* the New Jersey Supreme Court explained that requiring a displacee to present his claims to the agency furthers, *inter alia,* the salutary goal of avoiding unnecessary adjudication, particularly where constitutional issues may be implicated. *Id.* at 387. As the New Jersey Supreme Court decision in *Schulman* makes clear, the relief available under N.J. Stat. Ann. §20:4-19 (West 1982) is sufficient to compensate a relocatee for damages suffered. *Id.* at 390-393.

Petitioner would also have had recourse to two separate state statutes and state forums had it been unlawfully evicted as alleged. First, Respondent Authority gained pos-

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* Under the 1967 statute remedies were also provided. See N.J. Stat. Ann. §52:31B-8.

session of Petitioner's Premises pursuant to the November 20, 1973 Consent Order obtained in accordance with the provisions of the New Jersey Eminent Domain Act, N.J. Stat. Ann. §20:3.1 (West 1982). At any point throughout the eighteen (18) months of judicial action leading up to the final order directing Petitioner to vacate the Premises, Petitioner could have asserted, either as defense or counterclaim, that the action should be barred or delayed because of respondents' failure to comply with the strictures of the relocation laws or rules. Significantly, at no time did Petitioner choose to contest the process on the basis of purported wrongdoings by respondents. Second, subsequent to the Respondent Authority's having obtained possession of Petitioner's property, Petitioner could have sought relief under the New Jersey Tort Claims Act, N.J. Stat. Ann. §59:2-2(a) (West 1982); N.J. Stat. Ann. §59:3-1(a) (West 1982). Again, Petitioner chose not to avail itself of this avenue of redress provided by state law. Instead, Petitioner chose to wait more than six (6) years to bring this meritless §1983 suit. This is precisely the course of conduct which offended this Court in *Parratt.*

B. Petitioner misconstrues the statutory criteria applicable to the choice of limitations law in civil rights actions.

Congress did not establish a statute of limitations applicable to actions brought in federal court under §1983. *Board of Regents* v. *Tomanio,* 446 U.S. 478 (1980). Rather, a federal court must apply the state limitations law governing an analogous cause of action. *See* 42 U.S.C. §1988, which provides in relevant part as follows:

> The jurisdiction in civil and criminal matters conferred on the district courts . . . for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the ***common law, as modified and changed by the consti-***

> *tution and statutes of the State wherein the court having jurisdiction of such civil or criminal causes is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause.* (Emphasis added.)

As indicated by the express terms of this statute, there is nothing "peculiar to a federal civil rights action that would justify special reluctance in applying state law." *Johnson* v. *Railway Express Agency,* 421 U.S. 454, 464 (1975). A state limitation law is "more than a technical obstacle to be circumvented if possible." *Board of Regents,* 446 U.S. at 484.

It is unnecessary to speculate as to what statute of limitation the New Jersey courts would apply if Petitioner's action against Respondent Authority were brought in a New Jersey court. A New Jersey court has, in fact, addressed this issue and has determined that the two-year limitation contained in the New Jersey Tort Claims Act, N.J. Stat. Ann. §59:1-1 to 14-4 (West 1982), should apply to constitutional civil rights claims. *Lloyd* v. *Stone Harbor,* 432 A.2d 572 (Ch. Div. 1981).

The fact that the New Jersey Tort Claims Act has been held applicable to "constitutional" injuries is not, however, essential to the conclusion that the limitation period contained in the New Jersey Tort Claims Act is the limitation period to be applied in this case. Rather, analysis of Petitioner's claim in the context of the criteria prescribed for determining the appropriate state limitation law to be applied in civil rights cases, an analysis undertaken by the District Court (Petition, at 16a to 25a), convincingly demonstrates that the most analogous New Jersey state limitation law is that contained in the New Jersey Tort Claims Act and not the alternative limitation law suggested by Petitioner, N.J. Stat. Ann. §2A:14-1 (West 1982) (the general New Jersey six-year statute of limitations for injury to property), which clearly does not apply to "constitutional" injuries.

Petitioner's argument that application of the New Jersey Tort Claims Act limitation disregards the nature of the underlying cause of action (Petition, at 9-10) is groundless. As described by the District Court, Petitioner's claim against Respondent Authority is "a claim for tortious injury to property at the hands of a public authority" (R. 798a). This is precisely the type of claim covered by the New Jersey Tort Claims Act, a statute which, contrary to Petitioner's suggestion, does not apply to all claims against a public entity regardless of their nature. Had Petitioner's claim, for example, involved a contract claim against a public entity, the New Jersey Contractual Liability Act, N.J. Stat. Ann. §59:13-1 to 13-10 (West 1982), and its limitation law, N.J. Stat. Ann. §59:13-5 (West 1982), would have been applicable by analogy.

Contrary to Petitioner's argument (Petition, at 8-11), application of the limitation period contained in the New Jersey Tort Claims Act to Petitioner's claims against Respondent Authority is not inconsistent with federal law. It should be noted at the outset that outcome determination has no bearing on the issue of "inconsistency":

> A state statute cannot be considered "inconsistent" with federal law merely because the statute causes the plaintiff to lose the litigation. If success of the §1983 action were the only benchmark, there would be no reason at all to look to state law, for the approprate rule would then always be the one favoring the plaintiff, and its source would be essentially irrelevant. But §1988 quite clearly instructs us to refer to state statutes; it does not say that state law is to be accepted or rejected based solely on which side is advantaged thereby.

Robertson v. *Wegmann*, 436 U.S. 584, 593 (1978).

Reduced to its essential, Petitioner's "inconsistency" argument is that the New Jersey Tort Claims Act, which Petitioner claims "preserves" sovereign immunity, is inconsistent with certain decisions of this Court, particularly *Owen* v. *City of Independence*, 445 U.S. 622 (1980), which Petitioner claims "abolish" sovereign immunity. This argument is not only overly simplistic; it is also misleading factually.

While in *Owen* this Court held that municipal bodies sued under §1983 were not entitled to a qualified privilege, sovereign immunity was not "abolished" generally. Quite to the contrary, this Court simply held that sovereign immunity could not limit a municipality's liability under §1983. *Id.* at 644. This is totally consistent with New Jersey Court decisions interpreting the New Jersey Tort Claims Act, while, like Owen, while recognizing the preservation of some degree of sovereign immunity as to tort claims arising out of discretionary acts or omissions, hold that such immunity does not limit a §1983 action.

The two doctrines that traditionally afforded municipal corporations protection from tort liability under the doctrine of "sovereign immunity" are discussed at length in *Owen.* The first doctrine, which distinguishes between a municipality's "governmental" and "proprietary" functions, has, as noted by the Court in *Owen,* essentially eroded. *Id.* at 644-47. The New Jersey Tort Claims Act, enacted after substantial judicial criticism of this doctrine, *see,* for example *B.W. King, Inc.* v. *West New York,* 230 A.2d 133, 141 (1967), reflects this general trend. *See Tower Marine, Inc.* v. *New Brunswick,* 420 A.2d 1029, 1038 (Ch. Div. 1980). The second doctrine, which distinguishes between "discretionary" activities and "ministerial" activities, is not disturbed by the Court in *Owen* because it simply has no applicability to §1983 actions:

> That common-law doctrine merely prevented courts from substituting their own judgment on matters within the lawful discretion of the municipality. But a municipality has no "discretion" to violate the Federal Constitution; its dictates are absolute and imperative. And when a court passes judgment on the municipality's conduct in a §1983 action, it does not seek to second-guess the "reasonableness" of the city's decision nor resolution of competing policy considerations. Rather, it looks only to whether the municipality has conformed to the requirements of the Federal Constitutional Statutes.

Owen, 445 U.S. at 649. The New Jersey decisions interpreting and applying the New Jersey Tort Claims Act are

totally consistent with this view. *See*, for example, *T & M Homes, Inc.* v. *Township of Mansfield*, 393 A.2d 613, 622 (Law Div. 1978) (wherein the Court held that the New Jersey Tort Claims Act, which excuses municipalities and their officials from liability with respect to discretionary acts, did not bar a suit against the municipality and officers of the municipality charging a violation of federal rights). *See also Mancini* v. *Lester*, 630 F.2d 990, 994-95 (3d Cir. 1980) (citing *T & M Homes*); *Gipson* v. *Bass River*, 82 F.R.D. 122 (D.N.J. 1979).

Thus, contrary to Petitioner's argument, application of the limitation period contained in the New Jersey Tort Claims Act does not constitute borrowing of "sovereign immunity" (Petition, at 10). The New Jersey Tort Claims Act basically abolishes sovereign immunity; the fact that the Act contains a limitation period (a reasonable one of two years for suit against governmental bodies) does not alter this fact. As the recommendations of the *Report of the Attorney General's Task Force on Sovereign Immunity* (May, 1972), specifically followed in the enactment of the New Jersey Tort Claims Act, state, "[i]t is time for the reasonable abolition of sovereign immunity in the State of New Jersey," (Appendix, at 9) and "an examination of the rather haphazard approach to government liability extant in the State of New Jersey today provides convincing evidence that only a *comprehensive* and *uniform* statute which applies to all governmental entities—whether local or state—including public authorities, will provide for the development of an intelligent and uniform body of governmental tort law in the State of New Jersey." (Appendix, at 15).

Finally, Petitioner's argument that there is a conflict among the Circuits on the limitation law to be applied in civil rights cases is misleading. As noted *supra*, the decision of the Court of Appeals for the Third Circuit is not in conflict with the decision of any other Court of Appeals on this issue, the Third Circuit not having decided this issue. Moreover, Petitioner ignores the fact that any di-

versity which may exist in the decisions of other Circuit Court of Appeals results largely from the mandate of 42 U.S.C. §1988, which requires a federal court to analyze the unique set of limitation statutes (and tort claims statute) which exist in any particular state to determine the limitation period which would be applied by a state court in an analogous action. Resolution of this question is necessarily idiosyncratic.

Thus, for example, the Ninth Circuit decisions referred to by Petitioner are distinguishable. In applying the analogous California limitations law, the Court of Appeals for the Ninth Circuit has applied the California statute of limitations applicable to all *statutory* causes of action that do not contain their own limitation period, a limitation law consistently applied by the Ninth Circuit before enactment of the California Tort Claims Act. *See Donovan* v. *Reinbold*, 433 F.2d 738 (9th Cir. 1970). New Jersey has no such statute. Moreover, in considering the application of the California Tort Claims Act limitation period, the Ninth Circuit has not distinguished application of such period from application of all of the provisions of the California Tort Claims Act (*e.g.*, claim provisions, etc.), the latter having been argued by the defendants in *Donovan* and having been assumed by the Court. Such distinction should be made and has, in fact, been made by state and federal courts sitting in New Jersey.

CONCLUSION

For the reasons hereinabove set forth, Respondent New Jersey Sports and Exposition Authority respectfully requests that the Petition for a Writ of Certiorari to the Court of Appeals for the Third Circuit be denied.

Respectfully submitted,

WINNE, BANTA & RIZZI,
Attorneys for Respondent, New Jersey Sports and Exposition Authority,

By: JOSEPH A. RIZZI.

Dated: May 12, 1983

APPENDIX

Limitation of Civil Actions

N.J. STAT. ANN. §2A:14-1. *6 years*

Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattels, for any tortious injury to the rights of another not stated in sections 2A:14-2 and 2A:14-3 of this Title, or for recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such action shall have accrued.

This section shall not apply to any action for breach of any contract for sale governed by section 12A:2-725 of the New Jersey Statutes.

New Jersey Relocation Assistance Act of 1971

N.J. STAT. ANN. §20:4-4. *Moving and related expenses*

a. If a taking agency acquires real property for public use, it shall make fair and reasonable relocation payments to displaced persons and businesses as required by this act, for:

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses or tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the taking agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

b. Any displaced person eligible for payments under subsection a. of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection a. of this section may receive a moving expense allowance, determined according to a schedule established by the taking agency, not to exceed $300.00, and a dislocation allowance of $200.00.

c. Any displaced person eligible for payments under subsection a. of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this sub-

section in lieu of the payment authorized by subsection a. of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than $2,500.00 nor more than $10,000.00. In the case of a business, no payment shall be made under this subsection unless the taking agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the taking agency, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings," means one-half (½) of any net earnings of the business or farm operation, before Federal, State and local income taxes, during the two (2) taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such period.

N.J. STAT. ANN. §20:4-7. *Relocation assistance advisory programs*

a. Whenever the acquisition of real property for a program or project undertaken by a taking agency will result in the displacement of any person on or after the effective date of this section, such agency shall provide a relocation assistance advisory program for displaced

persons which shall offer the services prescribed herein. If the taking agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer such person relocation advisory services under such program.

b. Each relocation assistance program required by subsection a. shall include such measures, facilities, or services as may be necessary or appropriate in order (1) to determine the needs of displaced persons, business concerns, and nonprofit organizations for relocation assistance; (2) to assist owners of displaced business and farm operations in obtaining and becoming established in suitable business locations or replacement farms; (3) to supply information concerning programs of the Federal, State and local governments offering assistance to displaced persons and business concerns; (4) to assist in minimizing hardships to displaced persons in adjusting to relocation; and (5) to secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

N.J. STAT. ANN. §20:4-10. *Authority of the commissioner*

a. The commissioner shall adopt such rules and regulations as may be necessary to assure:

(1) that the payments and assistance authorized by this act shall be administered in a manner which

is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this act shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of a payment, may have his application reviewed by the head of the taking agency or other appropriate officer.

b. The commissioner may prescribe such other regulations and procedures, consistent with the provisions of this act, as he deems necessary or appropriate to carry out this act.

N.J. STAT. ANN. §20:4-11. *Administration*

In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the commissioner may authorize any taking agency to enter into contracts with any individual, firm, association or corporation for services in connection with such programs, or may carry out its functions under this act through any Federal or State agency or instrumentality having an established organization for conductinng relocation assistance programs.

New Jersey Relocation Assistance Act of 1971

N.J. STAT. ANN. §20:4-18. *Payments under this act additional to awards in condemnation awards*

The payments authorized in this act shall not be construed as creating in any condemnation proceeding brought under the power of eminent domain any element of damages not in existence on the effective date of this act and such payments are to be in addition to the just compensation established in the condemnation proceedings but only to the extent they are not otherwise included within the condemnation award.

N.J. STAT. ANN. §20:4-19. *Appeal procedure*

Any person or business concern aggrieved by final administrative determination, concerning eligibility for relocation payments authorized by this act may appeal such determination to the Superior Court.

New Jersey Relocation Assistance Act of 1967

N.J. STAT. ANN. §52:31B-8. *Aggrieved persons; hearing*

Any person or business concern aggrieved by any final action, ruling, notice or order of any State agency or unit of local government in the discharge of any duty imposed by this act on any such State agency or unit of local government, shall be entitled to a hearing before the commissioner. The application for such hearing must be filed with the commissioner within fifteen (15) days of the receipt by the applicant therefor of notice of the action, ruling, notice or order complained of. No such hearing shall be held except upon seven (7) days' written notice to all interested parties, and each such hearing shall be held within fifteen (15) days of the receipt of the application therefor. Within ten (10) days after the completion of such hearing, the commissioner shall issue an appropriate order approving, modifying, and approving as so modified, or setting aside in whole or in part the action, ruling, notice or order complained of, a copy of which order shall be served on all interested parties. Pending the determination by the commissioner, and upon application therefor, the commissioner may grant a stay of the action, ruling, notice or order complained of; provided, that no such stay shall be granted except upon such terms and conditions as will insure compliance with the provisions of this act.

New Jersey Tort Claims Act

N.J. STAT. ANN. §59:2-2. *Liability of public entity.*

a. A public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances.

b. A public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable.

N.J. STAT. ANN. §59:3-1. *Generally*

a. Except as otherwise provided by this act, a public employee is liable for injury caused by his act or omission to the same extent as a private person.

b. The liability of a public employee established by this act is subject to any immunity of a public employee provided by law and is subject to any defenses that would be available to the public employee if he were a private person.

Excerpts from Report of the Attorney General's Task Force on Sovereign Immunity

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STATE OF NEW JERSEY

May, 1972

CHAPTER 2

ATTORNEY GENERAL'S RECOMMENDATIONS

SUMMARY

While there are many significant proposals contained throughout this report and particularly in the draft legislation, it is the central thesis of this report that the liability of the State of New Jersey in contract and tort be adjudicated through the regular court system without a jury trial and pursuant to a comprehensive statutory scheme.

Specifically the principal recommendations are as follows:

1. ***The State of New Jersey should legislatively provide selective abolition of its sovereign immunity in contract and tort.***

It is time for the reasonable abolition of sovereign immunity in the State of New Jersey. Throughout other jurisdictions there has been an increasing and steady movement away from immunity. The growing recognition that the basic unfairness of the State's refusal to permit itself to be sued when its actions result in injury to innocent third parties has become an impelling force

for change. An examination of governmental immunity in the State of New Jersey establishes the principle that while all the local units of government must face the test of liability in the courts, the State of New Jersey will not do so. Even on the State level the Legislature has embarked upon a "case by case" method of abolishing immunity by the usage of the phrase "may sue and be sued." Thus, some State agencies are still immune from suit while others have either the fortune or misfortune of having been granted the ability to sue and be sued and therefore are liable for tortious conduct to the same extent as any local governmental entity.

At a time when the responsiveness of all levels of government is being continuously challenged, it is difficult to continue to support such an arbitrary and unjust doctrine. It seems even more difficult to believe that the State of New Jersey is willing to provide a crime compensation fund for payments to victims of crime—a victimization over which the State has little effective control—and at the same time continue to refuse to permit itself to be sued when its own conduct and that of its employees has harmed equally innocent third persons. In this regard it should be noted that two other states who have passed crime compensation legislation—New York and California—did so after they had long since abandoned the archaic doctrine of sovereign immunity.

Examination of those two jurisdictions in particular has confirmed the belief that the State need not fear unlimited and uncontrolled liability from a selective and intelligent waiver of its immunity from suit. It is, therefore, strongly recommended that the State abolish its traditional shield of sovereign immunity.

Excerpts from Report of the Attorney General's Task Force on Sovereign Immunity

2. *The present legislative procedure for adjudicating all claims against the State should be abolished.*

The New Jersey Legislature is currently confronted with the same inappropriate and burdensome task of deciding individual claims against the State which ultimately resulted in the Congress of the United States passing the Federal Tort Claims Act in 1946. In addition to considerations of fair play and justice for the innocent victims of tortious conduct, the Congress found itself compelled to waive immunity to relieve itself from passing upon a myriad of private bills, from acting as a fact-finding agency as well as a judicial forum, and from the burden of attempting to expedite payment of meritorious claims.

Governor Cahill and former Governor Hughes have both articulately expressed the manifest injustice and obvious inequities inherent in the current legislative claims procedure. It is clearly time for the Legislature of the State of New Jersey to relieve itself from the burdens imposed by the adjudication of claims presented to it, and it is clearly time for the Legislature to admit that it is not and was never intended to be constituted or equipped to perform what is essentially a judicial role—fact-finding and ruling on the merits of a claim. Other legislatures have abandoned this task without great difficulty. In New York, for example, a constitutional amendment in 1874 proscribed the legislature from auditing or allowing any private claim or account against the State. This amendment was prompted by criticisms similar to those already leveled at the procedure in New Jersey today, namely: (1) the legislature should not act as a judicial body; (2) claims were actually decided in committee and

the entire body of the legislature never knew what they were voting for; (3) the legislature did not have adequate time to make proper investigations of claims; (4) a separate agency would give greater uniformity of decisions. In fact, in light of the other staggering burdens imposed upon legislative members, it would seem that functions peculiarly unsuited for their deliberations should no longer occupy their valuable time.

While it is urged that the Legislature should remove itself from the normal processing procedure, it is nonetheless believed that it should retain sufficient authority to rule upon claims which may fall within a category commonly referred to as "moral obligations." Such obligations usually arise in situations where the law does not provide for a remedy, but where the hardship involved cries out for relief. The legislatures of the States of New York and California have used this approach effectively and fairly, and it is suggested that the New Jersey Legislature should also retain this very limited claims review function.

3. *The State of New Jersey should immediately enact a contract liability statute.*

The overwhelming majority of States throughout the country as well as the Federal Government have been and are subjecting themselves to liability for contract claims. In fact, the officials interviewed in some jurisdictions were amazed to find that a State could voluntarily enter into a contract and then be free to completely disclaim its obligations under the very contract it had agreed to. Indeed it is even arguable that such immunity may in fact be an unconstitutional impairment by a State of the obligations of contract. It seems clear

that it is unconscionable for a State to be permitted to repudiate a contract which it has voluntarily entered and which binds the other parties. In any event, it is strongly urged that the State of New Jersey should be liable for contract claims against it.

While this proposal is primarily intended to treat the State similarly with private individuals in matters arising out of contract, it is nonetheless recommended that the State should not be subjected to liability on the basis of a contract implied at law, for a breach of implied warranty or for consequential damages since the nature and extent of such liability in damages would expose the State to unforeseen risks.

4. *New Jersey should enact a comprehensive tort claims statute containing specific immunities which applies to all public entities throughout the State.*

It is recommended that the Legislature enact a uniform and comprehensive tort claims act providing the statutory framework for adjudicating the liability of *all public entities* throughout the State of New Jersey. This recommendation follows the basic statutory approach contained in the California Tort Claims Act of 1963. The proposed Act would *reestablish the immunity* of all public entities in the State of New Jersey *subject to liabilities* set out in reasonable detail in the statute. In addition, certain specific immunities are provided for the exercise of governmental functions. The California Law Revision Commission's recommendations contain the following comment in support of the above proposal:

> "A statute imposing liability with specified exceptions will provide the governing bodies of public

entities with little basis upon which to budget for the payment of claims in judgments for damages, for public unforeseen situations, any one of which could give rise to costly litigation in any possible damages judgment. Such a statute would invite actions brought in hopes of imposing liability on theories not yet tested in the Court and could result in greatly expanding the amount of litigation and the attendant expense which public entities would face. Moreover, the cost of insurance under such a statute would no doubt be greater than under a statute which provided for immunity except to the extent provided by enactment, since an insurance company would demand a premium designed to protect against the indefinite area of liability that exists under a statute imposing liability with specified exceptions.

"Accordingly, the legislation recommended by the Commission provides that public entities are immune from liability unless they are declared to be liable by an enactment. This will provide a better basis upon which the financial burden of liability may be calculated, since each enactment imposing liability can be evaluated in terms of the potential cost of such liability. Should further study in future years demonstrate that additional liability of public entities is justified, such liability may be imposed by the Legislature but in carefully drafted limits."

See *California Law Revision Commission, Recommendations Relating to Sovereign Immunity,* 811 (1963).

Excerpts from Report of the Attorney General's Task Force on Sovereign Immunity

Moreover, an examination of the rather haphazard approach to government liability extant in the State of New Jersey today provides convincing evidence that only a *comprehensive* and *uniform* statute which applies to all governmental entities—whether local or State—including public authorities, will provide for the development of an intelligent and uniform body of governmental tort law in the State of New Jersey.

In an effort to assist in the development of such a body of tort law, the following specific substantive provisions are included in the proposed New Jersey Tort Claims Act:

A. A broad provision immunizing a public entity for highlevel discretionary activities based upon the underlying thesis that "it is not a tort for government to govern" and allowing a very limited review of the allocation by government of resources already obtained.

B. Immunity for issuance, denial, suspension or revocation of permit, license, etc.

C. Immunity for failure to inspect, or negligent inspection of, property.

D. The discretionary decision to enforce or not to enforce the laws.

E. Generally no liability for the failure to provide adequate supervision of public recreational facilities.

F. No liability for the actual fraud, actual malice or willful misconduct of public employees.

G. A broad immunity for injuries resulting from a plan or design of public property when it has been of-

ficially approved by an authorized governmental body.

H. A broad immunity for injuries occurring on unimproved property and generally when government lands are provided in their natural state for recreation and enjoyment (on the thesis that in light of the limited funds available for the acquisition and improvement of such property, it is reasonable to expect persons using that property to assume the risk of injuries arising thereform as part of the price to be paid for the benefits received).

I. Prisoners may sue under the Act for injuries resulting from the negligence of public entities or their employees but not during their period of institutional confinement. Also there is no recovery against public employees or a public entity for injuries to prisoners caused by other prisoners.

J. Generally, immunity for the failure to provide or the inadequate provision of personnel, facilities or equipment in most areas of governmental responsibility—such as police, fire, hospital care, etc.